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FROM: LLOYD W. PELLMAN 
County Counsel

RE: **Bouman/Equity Oversight Panel's First Quarterly Report**

This is to forward a copy of the first Quarterly Report of the Equity Oversight Panel.

The Equity Oversight Panel (EOP) consists of five independent experts who review Sheriff's Department's investigations of Policy of Equality violations and make appropriate recommendations of discipline.

The EOP also monitors and evaluates the quality of the Equity Unit investigations and the effectiveness of the Equity Policy and Procedures and serves as an Equity Policy advisor to the Department.

In September 2002, your Board approved execution of the EOP Member's Contracts. After a period of orientation, the EOP became active when the Sheriff's Department's Policy of Equality and related Procedures went into effect on January 5, 2003. Since then the EOP has been engaged in carrying out their responsibilities.

If you or any member of your staff have questions concerning this matter, please contact Mary Wickham, Senior Deputy County Counsel at 213-974-1859.

LWP:MCW:dh

Enclosure

c: Sheriff Leroy D. Baca

David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

Dennis A. Tafoya, Director
Office of Affirmative Action Compliance

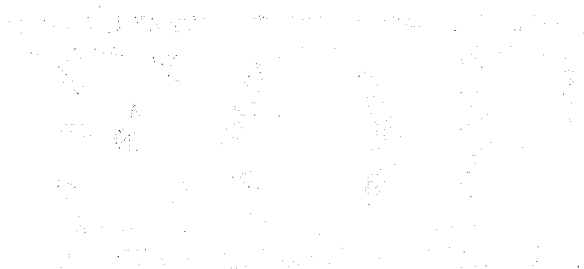
LOS ANGELES COUNTY

Sheriff's Department

EQUITY OVERSIGHT PANEL

1ST QUARTERLY REPORT

JANUARY - MARCH 2003



Introduction

In 2000 a collaborative effort between *Bouman* Class Counsel and the Los Angeles County Sheriff's Department resulted in the development of the Policy of Equality. The policy was approved by the Board of Supervisors in the same year and in 2001, was approved by the District Court and became a part of the Consent Decree entered into between the Department and Class Counsel in *Bouman v. Baca*.

The Equity Oversight Panel was conceived as an independent oversight panel to oversee the Department's implementation of the Policy of Equality. This innovative model of oversight was conceived and embraced by *Bouman* Class Counsel, Counsel for the Sheriff's Department, Sheriff Lee Baca, and the Los Angeles County Board of Supervisors.

The Equity Oversight Panel (EOP) has authority and is responsible for reviewing Equity Unit investigations and making appropriate determinations for violations of the Policy of Equality and/or Procedures. The Equity Oversight Panel is charged with meeting bi-monthly, or more frequently if necessary, to discuss and review Equity Unit investigations, to conduct hearings on those investigations, to make findings, and recommend discipline where appropriate.

In addition, the Equity Oversight Panel is responsible for, among other matters, monitoring and evaluating the quality of the Equity Unit investigations and the effective-

California (MWD), Coca Cola, Lockheed-Martin, the State of California and a number of municipalities.

Mr. Harris' professional affiliations include the American and National Bar Associations, the California and Los Angeles Trial Lawyers Associations, and the John M. Langston Bar Association. In addition, he serves on the Boards of the Martin Luther King Hospital Foundation and the Boy Scouts of America, in addition to the Ethnic Advisory Board to the South Coast Air Quality Management District (AQMD).

Mr. Harris has served as a Temporary Judge for the Los Angeles County Superior Court for the past four (4) years.

ABBY J. LEIBMAN

Ms. Leibman was admitted to the California State Bar in 1981. The following year, she became the Associate Director of the Los Angeles Unified School District's Commission for Sex Equity and provided technical and legal advice and counsel to the District on matters pertaining to sex discrimination. In 1984 she was a founding board member and Executive Director of the California Equity Council, a statewide advocacy organization providing legal and technical analysis on issues pertaining to sex discrimination in education. From 1985 to 1989, she was an attorney with Public Counsel, a Los Angeles legal services agency.

In 1989, Ms Leibman founded and was the Executive Director of the California Women's Law Center, a statewide policy and advocacy center for women's civil rights. The Center deals with issues that include discrimination, violence against

LLOYD LOOMIS

Mr. Loomis, a partner with the law firm of Sonnenschein Nath & Rosenthal, is a member of the California, Missouri, and Illinois Bars and is admitted to practice before numerous Federal Courts, including the United States Supreme Court. His practice has included a wide variety of employment law issues involving both employment litigation and counseling. Mr. Loomis also serves as a neutral mediator and arbitrator with respect to employment matters. His mediation/ arbitration experience includes class action discrimination and wage hour matters as well as claims brought by individuals involving wrongful termination, age, race, sex, and national origin discrimination, and workplace harassment.

In 1992, Mr. Loomis was appointed by then Governor Wilson to the California Workers' Compensation Fraud Assessment Commission and was subsequently reappointed in 1995 and 1998. He currently serves as the Chair of the Commission. In 1996, he was appointed by the Chair of the EEOC to serve on the committee responsible for developing regulations for the Older Workers Benefits Protection Act. In 1997, he was honored by being elected as a Fellow of the College of Labor and Employment Lawyers.

Prior to entering private practice in 1999, Mr. Loomis was the Senior Counsel for Labor and Employment Law at the Atlantic Richfield Company in Los Angeles and held that position from 1980 until 1999.

Mr. Loomis is a contributing editor to the Schei & Grossman, Employment Discrimination Law, 2nd Edition; a contributing author to the treatise Employee

Insurance Management Society with regard to employment practices liability for non-profit entities.

Between April 2000 and January 2001, Ms. Schwartz was a member of the Los Angeles Police Commission's Rampart Independent Review Panel. In this capacity she reviewed over one hundred files of officer misconduct, conducted and/or reviewed over one hundred interviews with citizens and law enforcement officers in Los Angeles and other jurisdictions, reviewed LAPD's Internal Affairs procedures for ensuring integrity and for conducting criminal and corruption investigations, and analyzed and compared internal affairs policies and procedures from other jurisdictions.

Ms. Schwartz serves on the City of San Diego's Citizens' Review Board on Police Practices, which reviews category II complaints, investigations and findings involving force, arrests, discrimination, and criminal conduct and makes recommendations to the City Manager and Chief of Police.

Ms. Schwartz has served as a Judge Pro-tem for San Diego Small Claims Court, as an arbitrator for the San Diego County Bar Association and as a member of the American Arbitration Association and Federal Arbitration Panel.

SUSAN TYLER

Ms. Tyler was a member of the Los Angeles County Sheriff's Department for 28 years and retired in 1998 at the rank of lieutenant. During her tenure with the Department, she chaired, or was a member of, a number of committees and task forces involving equity issues. She was part of the committee that assisted in developing the first

Overview of EOP Functions

EOP FUNCTIONS, GOALS, AND RECOMMENDATIONS

The County of Los Angeles has determined that there is a need for a panel of experts to review LASD Policy of Equality investigations and to render a disposition and make disciplinary recommendations to the LASD. The EOP has been delegated several functions under the Policy of Equality in order to meet that need. The EOP members have identified the initial goals crucial to implementing those functions. During its first quarter of operations, the EOP analyzed the actions, policies and practices of the LASD in order to assess the current status with regard to each of those goals. In the majority of the functions, the EOP found that the LASD must take immediate and comprehensive steps to remove barriers to meeting those goals and/or to make any progress toward meeting those goals. EOP has identified a number of recommendations that will assist the LASD in those efforts.

1. Function: Review Equity Unit Investigations

Goal: To recommend actions, policies and practices that will ensure that the LASD's investigations are full, fair and effective.

Analysis: There are serious deficiencies in the current approach and process used for intake and investigation that undermine the LASD's success in ensuring that the LASD's investigations are full, fair, and effective.

- Develop a system for tracking the EOP cases, trends, etc.
- Develop a system for identification of precedents
- Ensure that the LASD intake and investigation procedures support a system that ensures timely determinations.

3. Function: Monitor and Evaluate the Quality of Equity Unit Investigations

Goal: To make recommendations to the LASD so that the LASD can ensure Equity Unit investigations are of the highest quality.

Analysis: There are serious deficiencies in the standards used and in the manner in which they are applied throughout intake and investigations. There are serious deficiencies in the expertise of those charged with intake and investigation; there are serious deficiencies in the approach to those intakes and investigations.

Recommendations:

Ensure that the LASD:

- Identifies consistent, reliable investigators
- Tracks complaint histories of parties
- Tracks intakes
- Tracks complaints/investigations
- Trains intake and investigative personnel in discrimination- related laws and policies, including the POE
- Develops guidelines and training in equity-related intake, including what questions are appropriate to provide thorough intake and proper classification.

Recommendations:

The EOP will:

- Apply fair and consistent criteria to all determinations
- Impose fair and effective discipline for all founded complaints
- Identify trends and patterns

5. Function: Serve as the Equity Policy Advisor to the LASD

Goal: To provide the LASD with an effective, fair, and accessible equity advisor.

Recommendations:

The EOP will:

- Implement steps to ensure the visibility of the EOP
- Review policies, procedures and practices throughout the LASD to ensure compliance with the POE
- Ensure that the LASD develops a plan for on-going training on the Policy of Equality

Discussion *of Functions*

FUNCTION 1: REVIEW EQUITY UNIT INVESTIGATIONS

Goal: To ensure full, fair and effective investigations.

Recommendations:

Ensure that the LASD:

- Improves tracking systems,
- Improves the organization of investigation reports
- Improves the approach to investigations
- Ensures timely investigations
- Develops policies and procedures for the intake process, including what to do if a complainant can not be reached, when to request assistance in making an assessment, etc.
- Uses effective forms to capture all relevant information on which to base assessments.
- Tracks complaints in order to identify trends that could signal training deficiencies, a problem at a particular unit, etc.

The EOP understood that the POE and its procedures are both unique in law enforcement and a significant change in the approach to resolving employment discrimination complaints within the LASD. That understanding led the EOP to

In January, PII's sole responsibility became to partner with Equity Unit investigators on on-going equity investigations involving sex discrimination or discrimination based on sexual orientation involving sworn personnel (see definition of a "*Bouman*" case). OAAC was instructed to provide similar assistance to the Unit in all other equity-related cases.

BOUMAN CASE

In order to be considered a "*Bouman*" case, the case must fall within one of the following three categories:

- I. NON SUPERVISORY RESPONSE CASES:** The case must involve harassment or discrimination based upon sex, gender, or sexual orientation (excluding same sex male-on-male claims) and must involve a sworn Department member as either a complainant or subject.
- II. SUPERVISORY RESPONSE CASES:** The case must involve supervisory response to cases that fall within Category I.
- III. RETALIATION CASES:** The case must involve retaliation in connection with a case that falls within Category I.

unit weekly. At the end of January 2002, sixty-seven (67) intakes had been received. By mid-February, the determination of those intakes was unknown. The EOP had reviewed some, but not all of them. Some required an initial investigation, some were obviously going to be returned to the complainant's unit for disposition (in some cases a non-equity Internal Affairs investigation), and others did not rise to the level of any sort of formal investigation. Additionally, some of the allegations made in the intake reports concerned actions that occurred while the previous policy was still in effect and others occurred after the new Policy of Equality was implemented. The former would have to be investigated and "heard" under the previous policy and the latter under the new policy.

What the EOP discovered was that the Intake Specialist Unit was not "triaging" the intakes. Every complaint, whether or not equity-based, was being forwarded to the Equity Unit. The result was that, in addition to working on the cases already in progress and assigning new cases, the Equity Unit lieutenants were being buried in new intake forms. Because the intakes had not been assessed, the lieutenants took on that role, providing those intakes that did not appear to warrant an equity-related internal affairs investigation to the EOP for its review. Because appropriate questions necessary to making a determination were not being asked at the time of the intake, the lieutenants were assigning this task to Equity Unit investigators, who already had their hands full trying to complete old cases and begin new cases.

- Not only was the ISU not triaging the intakes, but no one was tracking them, i.e., how many were equity-related, how many were "*Bouman* cases," how

- Tracks complaints in order to identify trends that could signal training deficiencies, a problem at a particular unit, etc.

The EOP has initiated a number of actions to meet those recommendations.

At the request of the EOP, the County Counsel took action and assembled a committee with representatives from the Sheriff's Department, OAAC, and PII. This committee performed the ISU function and spent three days reviewing and categorizing the 156 Intake forms that had been received to date. A lettering system was created to categorize each case, and each case was assessed as to whether it fell under the previous policy or the POE, whether or not it was a *Bouman* case, whether it was an equity case at all, and finally whether an initial investigation was necessary to make those determinations. The ISU has now begun using this classification scheme to process the Intake forms.

- An "A" designation indicates that, based upon the information in the Intake form, it is clear that there has been/is a potential violation of the POE. An "A" case will be assigned an IAB investigation number and will be assigned to an Equity Unit investigator. The EOP reviews and notes the "A" Intakes.
- A "B" designation indicates that, based upon the information in the Intake form, the ISU believes that although the situation may involve, or appear to involve, an equity issue, the situation does not rise to the level of requiring an IAB investigation. All "B" cases must be reviewed by the EOP. The EOP review will result in one of three outcomes: The EOP may concur that an IAB investigation is not warranted (in which event the case is referred back to the

	JANUARY	FEBRUARY	MARCH	TOTAL
TOTAL INTAKES	67	58	52	177
ACTUAL POTENTIAL VIOLATIONS	64	54	51	169
"A" DESIGNATIONS/ <i>BOUMAN</i>	12	6	6	24
"A" DESIGNATIONS/ <i>NON BOUMAN</i>	8	7	3	18
"B" DESIGNATIONS	5	4	3	12
"C" DESIGNATIONS	18	18	14	50
"U" DESIGNATIONS*	21	19	25	65

**"U" designations that were resolved during the first three months are counted under their ultimate category*

Cases deemed not to be equity cases are required to be reviewed by the EOP and, despite having gone through the time-consuming task of identifying these cases, the system broke down as far as making the cases available to the EOP. Many of the cases identified as "B" and "C" cases, which require EOP review, were not ready or available for the EOP members to assess.

The EOP discussed with the County Counsel and the Equity Commander the absolute necessity of having a full-time, on-site project manager for at least a few months to get the entire process on track. As a result, the Department and OAAC

thirty-two (32), and then revised a final time for a total of forty-six (46) cases that were opened before January 5, 2003.

These continually shifting status reports raised concerns for the EOP:

- That there was no accurate accounting of the number of equity cases pending;
and
- To date it appears that the Department greatly underestimated the projected caseload.

This has raised the troubling likelihood that the resources allocated to the EOP for its functions and operations were grossly underestimated.

Prior to the establishment of the EOP, the Sheriff's Department and OAAC were charged with the responsibility of monitoring the equity investigation process. However, despite their ample opportunity to do so, they failed to establish adequate protocols to ensure that the volume and type of cases were accurately tracked.

Toward the end of February, the EOP notified County Counsel that there still was not an accurate, complete list of pre-January 5 investigations. In response, County Counsel arranged meetings with every Equity Unit investigator, OAAC, and PII to review exactly which cases were in progress, whether they were *Bouman* cases, and the status of each. On March 3, after three days of meetings, a document was prepared listing 36 pre-January 5, 2003, in-progress investigations.

Recommendations:

- EOP will develop hearing protocols and procedures
- Ensure that the LASD develops a system to better illuminate the context in which a complaint arises
- EOP will develop a system for tracking the EOP cases, trends, etc.
- EOP will develop a system for identification of precedents
- Ensure that the LASD intake and investigation procedures support a system that ensures timely determinations.

Among its top priorities, the EOP is reviewing its own approaches, practices and policies to make certain that they ensure the effectiveness of the Policy of Equality and that in all cases the EOP applies fair and consistent criteria to its determinations and recommends fair and effective discipline for all founded complaints.

Hearing Process Overview

The EOP is notified by the Equity Investigations Unit when an equity-related investigation is completed and ready for EOP review. The EOP members, who have signed confidentiality agreements as part of their contracts, are prohibited from removing the cases from the Equity Investigations Unit's office-all reviews of the cases are conducted on-site.

When the EOP makes a finding on an investigation and, if founded, recommends discipline, it is just that-a recommendation. Subjects have the same grievance and appeal rights as with the previous policy. The Panel's findings and recommenda-

It is thus premature for the EOP to rely on this inordinately small volume of cases heard to identify any trends, patterns, or practices in the LASD. As noted above, the EOP is mindful that the case volume will increase dramatically in the coming weeks. It is anticipated that this increased volume will lend itself to the identification of such trends, patterns, and practices.

Due to the lack of a tracking system, a number of investigations are nearing the one-year deadline for sworn personnel, resulting in the following:

- The return of a case for further investigation to resolve questions that arise will cause the case to go over the one-year time deadline (for sworn personnel).
- In cases where the Subject, Complainant, and/or Witness interviews took place almost a year ago, it is difficult, if not impossible, to go back now and recapture unasked questions.
- Some of these old investigations have been partially or almost completely written up, and it would be time-consuming and a poor use of limited resources to merely discard what has been written and start fresh using the new techniques and formats.

As the LASD, OAAC, and PII pick up momentum, the EOP caseload will dramatically increase over the next reporting period. It is too early to report any trends; however, the LASD, in partnership with both OAAC and PII, is eager to prepare the best investigations that it can. The LASD, OAAC, PII, and the EOP have had ongoing discussions of the types of formats and what content is needed to produce the most thorough, accurate, balanced, objective investigations.

Equity cases would be designated as either "*Bouman* cases" or "non-*Bouman*" cases-*Bouman* cases would be overseen by PII, and non-*Bouman* cases (all other equity-related cases) would be overseen by OAAC. This arrangement would continue until the OAAC, in conjunction with the Sheriff's Department, developed a Request for Proposal (RFP) and selected an outside contractor to replace Sheriff's Department investigators and conduct all equity investigations, with oversight being retained by OAAC. The time estimate for the selection of an outside contractor was never articulated for the EOP.

PII was to continue to partner with the Equity Unit investigators until such time as that contract was executed. PII also announced its intention to apply for that contract.

As of March 31, 2003, the County again altered its plan with regard to implementing intake and investigation for equity-related complaints. It decided that instead of out-sourcing its investigations to an independent agency, those investigations would remain the responsibility of the Department's Equity Unit. The OAAC was charged with providing guidance and assistance to the Unit in the assessment of those investigations. (While this report summarizes the understanding of the EOP with regard to the responsibilities of OAAC and PII, the EOP has not been provided with a definitive written description of those responsibilities.)

- The Equity Investigations Unit, which is being assisted by OAAC, and has PII as an outside vendor working in it, is organizationally in the LASD's Leadership and Training Division and reports to that Division's Chief.

Without an overall project manager who has the authority to coordinate, direct, and make decisions involving personnel in all four of these groups, the EOP has serious doubts as to whether the entire POE process can come together smoothly and in a timely manner.

Tracking

The current tracking systems for equity-related complaints are woefully inadequate. In order to successfully implement its functions, the EOP must be able to readily assess trends in case-type, location, disposition, and discipline. Such information will be invaluable in identifying training needs, policy changes and recommending appropriate and meaningful discipline. Areas in which improved systems must be implemented are:

- Tracking of complaint history of parties
- Tracking of intakes
- Tracking of complaints/investigations

Intake

The screening and assessment of equity related complaints during the initial intake must be improved. While the intake function should not replace an investigation, it must be thorough and accurate to ensure the appropriate classification

Investigations

Investigations must be conducted using an approach that ensures that they are comprehensive, consistent in regard to depth and quality, and presented in a format that facilitates review. There is a critical need for:

- Training of investigators in equity-related law and policies, including the POE
- Consistency in the approach used in conducting an investigation
- Consistency in the quality of the questions asked of parties and witnesses
- Investigation reports that are organized in a consistent manner which facilitates review
- Improved processing of investigations to greatly improve the timeliness of the entire investigation
- A system for prioritizing the processing of complaints for review

The EOP wants to underscore that whenever it has requested additional information or asked for clarification, the Equity Unit Investigators, PII, and the OAAC have been uniformly responsive.

Conclusion

There are serious deficiencies in the standards used and in the manner in which they are applied throughout intake and investigations. As a result of a lack of training, there are serious deficiencies in the expertise of those charged with

tural changes that are taking place in light of the emphasis on Respect-Based Leadership and the new POE.

EOP Purposes and Goals

The EOP took responsibility for ensuring that all of its members were knowledgeable about the facts and circumstances that led to the development of the POE, including the background and resolution of the lawsuit, *Bouman vs. Baca*, et al. In addition, the EOP spent many hours reviewing the documents and materials pertinent to its creation. Attorneys for both the County of Los Angeles and the Plaintiff in *Bouman vs. Baca*, et al, guided the EOP through a lengthy exposition of the origins of the EOP, the purposes of the EOP, its goals and functions.

Furthermore, the EOP began its ongoing efforts to appreciate the complexities of the LASD, its history, personnel, and systems. Such efforts include not only a review of the related literature such as policies, newsletters, and memoranda, but also touring the varied facilities operated by the LASD and discussing its role and functions with LASD personnel.

Policy of Equality

The Policy of Equality is the critical foundation on which the EOP rests all of its work. An understanding of its terms and application within the LASD was the prerequisite for the implementation of the work of the EOP. Therefore, the EOP spent considerable time reviewing and discussing the breadth and the depth of the POE.

information on the elements within the LASD that help to shape its culture, the bases on which change is, and will be measured, and the goals the LASD has set for shifting the culture of the LASD.

The Policy of Equality stands as an important articulation of the culture the LASD expects to establish.

EOP is taking note of trends and patterns in the policies and practices of the LASD for purposes of developing recommendations regarding policy or procedural changes which can allow the LASD to better implement the POE.

Initial LASD Efforts

On September 24, 2002, Buck Consultants conducted the first training class on the new Policy of Equality and Procedures (POE) to Sheriff's Department managers and executives at the Department's Quarterly Management Conference. Captains and above and their professional staff equivalents were provided copies of the new policy and had a full day of lectures, group activities, and interactive exercises. A second class was held on October 22, 2002, for those captains and above who were unable to attend the management conference.

On October 23, 2002, Buck began training Department middle managers (lieutenants) and supervisors (sergeants) and their professional staff equivalents. Also in this group were deputy personnel and professional staff who function as supervisors in certain specialized areas, e.g., field training officers, academy training staff, and so on. To date, 1,231 sergeants, lieutenants, and their professional staff

torted and, at times, absolutely false information about the POE. The most commonly heard responses from attendees following the training are that it wasn't as bad as it has been portrayed. The trainers not only have the task of training Department members in the new POE, but re-training them. One of the newsletters posed two hypothetical situations, which appeared designed to inflame readers about the unreasonableness of the POE. When this article was shown to Buck Consultants they incorporated the hypothetical situations into their training and had the participants evaluate them against the actual POE. The EOP applauds Buck Consultants for providing training that is not boiler-plated, but rather dynamic and flexible enough to be able to be modified as needs dictate.

One aspect of training still needs to be addressed. The EOP is unable to determine how the Sheriff's Department plans to incorporate the POE training into its ongoing training courses. For example, POE training must be made a part of the Training Academy curriculum so that new hires receive the training. The POE training must also be a part of the training/orientation for new professional staff hires. In addition, non-supervisory employees, both sworn and professional staff, who subsequently become supervisors, must receive supplemental training so that they understand their new responsibilities under the POE. The POE training for supervisors must be included in the Sergeant Supervisory School and must also be provided to new professional staff supervisors.

Additionally, the EOP recommends that the LASD make it a priority to develop a tracking system that ensures that Department members who have already attend-

- **Implementing needed training** - Buck Consultants is in the process of conducting, in partnership with LASD trainers, training in the POE.

The remaining culture change indicators identified by Buck Consultants, that the EOP will be monitoring, are:

- **Impacting the performance evaluation process** - Accomplishing this goal involves modifying the Sheriff's Department's annual performance evaluation format to include as a rating area(s) the respect-based leadership concepts contained in the POE.
- **Leveraging selection and promotion processes** - Culture change would include the Department's executives promoting/selecting for desirable assignments only those members who consistently have demonstrated, and continue to demonstrate, their commitment to respect-based leadership and the POE.
- **Impacting orientation of new hires** - The respect-based leadership philosophy and the POE must be made part of the orientation of new Department members, both sworn and professional staff. New hires should know from their first contact with the Department that respect-based leadership and adherence to the POE are integral to their being Department members.
- **Impacting counseling and discipline** - The EOP recommendations for counseling and discipline will always have as their goal to change behavior that

Conclusion

The Policy of Equality has been in effect for three months. During those initial three months, the Equity Oversight Panel identified goals and recommendations to meet its responsibilities under the Policy of Equality. Among its initial observations, the EOP identified a number of systemic problems pertinent to the POE. Many of these problems became evident only after the Panel began its work. It will take a commitment by all parties to address those problems and to resolve them effectively. The EOP goals and recommendations, and any progress toward meeting those recommendations to date, have been outlined in this, the Equity Oversight Panel's first quarterly report. The Panel will report its ongoing progress in its subsequent reports.